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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,616	09/19/2003	Richard S. Goldhor	mediacip-con	4024
27087	7590	05/29/2009	EXAMINER	
MICHAEL B. EINSCHLAG, ESQ. 25680 FERNHILL DRIVE LOS ALTOS HILLS, CA 94024			CLOUD, JOIYA M	
		ART UNIT	PAPER NUMBER	
		2444		
		MAIL DATE	DELIVERY MODE	
		05/29/2009	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/664,616	GOLDHOR ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Joiya M. Cloud	2444	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 29 July 2008.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 10-14 and 18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 10-14 and 18 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 09/19/2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____.   | 6) <input type="checkbox"/> Other: _____ .                        |

***DETAILED ACTION***

This action is responsive to the communication filed 09/08/2008. Claims 10-14 and 18 are PENDING. Claims 1-9, 15-17, and 19-39 are cancelled.

***Claim Rejections - 35 USC § 112***

Claims 10-14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicant's exemplary claim 10 recites the limitation "determining a measure of CPU availability," however nowhere does Applicant's instant specification describe how such measure of CPU availability is determined. Applicant's specification merely recites in regards to the above limitation, "As described above other system metrics, such as CPU availability, may also be used." This exemplification provides no further description in such a way to enable one skilled in the art to make and/or use the invention. Furthermore, Examiner submits that it is unclear how a streaming media is capable of being played back to a client or how the client is able to receive such streaming media, without a CPU being available. Such lack of clarity convinces the Examiner that CPU availability is near obvious or inherent, however Examiner has utilized the broadest reasonable interpretation of "a measure of CPU availability" to mean the available a measure of which CPU (server) is actively available for processing. Therefore, Examiner suggest Applicant define the intended invention regarding the measure of CPU availability.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10-14, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gupta (**US Publication No. 2002/0038374 A1**) in view of Hoyer et al. (**US Patent No. 6, 381, 635**).

**As per claim 10**, Gupta teaches a method for playback of streaming media received over a non-deterministic delay network at a client device which comprises receiving the streaming media at the client device, which client device includes a CPU (**figure 1 and col. 7, lines 38-50**); playing back the streaming media; determining a time-scale modification rate considering one user input time-scale modification to prepare the streaming media for playback (**col. 6, lines 39-48, user input is used for timeline modification changes and rate for playback at the client device and col. 6, lines 63-col. 7, lines 1-3**); and providing an indication of a current time-scale modification playback rate to the user (**Figure 5, col. 10, lines 23-30**).

Gupta does not explicitly teach determining a measure of **CPU availability**.

However Hoyer teaches determining a measure of CPU availability (**col. 7, lines 10-21**).

Accordingly, it would have been obvious to one of ordinary skill in the networking art at the time the invention was made to have incorporate Gupta's teachings to the teachings of Hoyer, for the purpose of routing request to client servers that are active and available (i.e. servers that have not failed or are in standby mode, **col. 7, lines 10-21**).

**As per claim 11**, Gupta-Hoyer teaches a method further comprises steps of providing an indication of a user requested time-scale modification playback rate (**Figure 5, col. 10, lines 23-30**).

**As per claim 12**, Gupta-Hoyer teaches wherein the step of playing back comprises associating a time-scale modification playback rate with each entry in a playback buffer queue (**col. 10, lines 53-62**).

**As per claim 13**, Gupta-Hoyer teaches wherein the indication comprises a function of recent time-scale modification playback rates (**col. 10, lines 53-62**).

**As per claim 14**, Gupta-Hoyer teaches wherein the step of utilizing comprising ignoring or modifying the user input time-scale modification playback rate when it would interfere with providing continuous playback (**col. 8, lines 40-44**).

*Claim Rejections - 35 USC § 103*

**As per claim 18**, Gupta teaches a method for playback of streaming media received over a non-deterministic delay network at a client device which comprises steps of: receiving the streaming media at the client device, which client device includes a CPU; playing back the streaming media; determining a time-scale modification playback rate as a function of the a

measure and utilizing time-scale modification to prepare the streaming media for playback (**col. 6, lines 39-48, user input is used for timeline modification changes and a time-scale modification speed is designated from the user for playback at the client device and col. 6, lines 63-col. 7, lines 1-3**).

Gupta does not teach determining a measure, where the measure is of CPU availability.

However, Hoyer teaches determining a measure, where the measure is of CPU availability (**col. 7, lines 10-21**).

Refer to the motivation of claim 10 which applies equally as well to claim 18.

### ***CONCLUSION***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joiya Cloud whose telephone number is 571-270-1146. The examiner can normally be reached Monday to Friday from on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Vaughn can be reached on 571-272-3922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-3922.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*JMC*

**/William C. Vaughn, Jr./**

**Supervisory Patent Examiner, Art Unit 2444**

**April 29, 2009**